Supreme Court, U.S.
FILED
02 877 DEC 6 2002
OFFICE OF THE CLERK

No.

In the Supreme Court of the United States

LEE YEAGER,
Petitioner,

v.

OHIO CIVIL RIGHTS COMMISSION,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE OHIO COURT OF APPEALS FOR THE ELEVENTH APPELLATE DISTRICT

PETITION FOR WRIT OF CERTIORARI

MICHAEL D. ROSSI
Counsel of Record

GUARNIERI & SECREST, P.L.L.
151 EAST MARKET STREET
P.O. BOX 4270
WARREN, OH 44482
(330) 393-1584

Counsel for Petitioner

BECKER GALLAGHER LEGAL PUBLISHING, INC.,
CINCINNATI, OHIO 800-890-5001

33 pp

QUESTION PRESENTED

In administering a statutory scheme for preventing unlawful discriminatory practices, may the state agency ignore Free Exercise Clause jurisprudence and permit religious discrimination by a place of public accommodation, where that place shows only that it would suffer a de minimus business hardship in accommodating its patron's religious beliefs?

PARTIES TO THE PROCEEDING

Petitioner

Petitioner is Lee Yeager, an individual citizen of the United States, residing in Austintown Township, Mahoning County, Ohio. Petitioner has no corporate affiliations. He was Charging Party before the Ohio Civil Rights Commission; Petitioner in the Trumbull County, Ohio Court of Common Pleas; and Appellant in the Ohio Court of Appeals for the Eleventh Appellate District, and before the Supreme Court of Ohio on discretionary review.

Respondent

Respondent is the Ohio Civil Rights Commission ("OCRC"), created under Ohio Revised Code ("RC") Chapter 4112. It has no corporate affiliations and is statutorily directed to "prevent any person from engaging in unlawful discriminatory practices," as defined. Respondent was Respondent in the Trumbull County Court of Common Pleas; and Appellee in the Ohio Court of Appeals and before the Ohio Supreme Court.

TABLE OF CONTENTS

Question Presented i

Parties to the Proceeding ii

Table of Contents iii

Table of Authorities v

Opinions Below 1

Jurisdictional Statement 1

Statutory Provision Involved 1

Statement of the Case 1

Argument of Important Questions of Federal Law 5

Conclusion 7

Appendix

Appendix A
Ohio Supreme Court Entry Declining Jurisdiction to Review Discretionary Appeal, 10/2/02 . . . . . 1a

Appendix B
Court of Appeals Judgment Entry, 8/6/02 . . . . . 3a

Appendix C
Court of Appeals Opinion, 7/1/02 . . . . . 10a

Appendix D
Common Pleas Judgment Entry, 7/27/01 . . . . 21a

Appendix E
Ohio Civil Rights Commission Dismissal Order, 3/28/00 . . . . . 23a

Appendix F
Statutory Provision Involved, Ohio Revised Code § 4112.02(G) 31a

TABLE OF AUTHORITIES

Cases: **Page**

Bowen v. Roy,
476 U.S. 693, 90 L.Ed.2d 735 (1986) 6

Employment Division v. Smith,
494 U.S. 872, 108 L.Ed.2d 876 (1990) 6

Franks v. Nat'l Lime & Stone Co.,
138 Ohio App.3d 124 (Hancock 2000) 5

In re Chiu,
Unreported No. CRC 4386, 1986WL327228
(OCRC 10/14/86) 5

Sherbert v. Verner,
374 U.S. 398, 10 L.Ed.2d 965 (1963) 6

Statutes:

28 U.S.C. §1257(a) 1

R.C. Chapter 4112 . . . . . ii, 1, 2, 4

R.C. §4112.02(G) 1

Other Authorities:

Supreme Court Rules 13.1 and 13.3 1

OPINIONS BELOW

The Ohio Supreme Court Entry issued October 2, 2002 (App. A at 1a), is unreported. The Court of Appeals Judgment issued August 6, 2002 (App. B at 3a), and Opinion issued July 1, 2002 (App. C at 10a), are unreported. The Court of Common Pleas Judgment issued July 27, 2001 (App. D at 21a), is unreported. The Ohio Civil Rights Commission Dismissal Order issued March 28, 2000 (App. E at 23a), is unreported.

JURISDICTIONAL STATEMENT

The Supreme Court of Ohio declined jurisdiction to entertain this discretionary appeal per its 10/2/02 Entry.

The jurisdiction of this Court is invoked under 28 U.S.C. §1257(a); and the timeliness of Petitioner's filing is governed by Supreme Court Rules 13.1 and 13.3.

STATUTORY PROVISION INVOLVED

This case involves R.C. Chapter 4112, particularly §4112.02(G).

STATEMENT OF THE CASE

Petitioner, Lee W. Yeager ("Yeager"), is a Christian Fundamentalist who sincerely holds the religious belief that forbids his body ("Temple") from being identified by either a "number," such as a social security account number, or by a "mark," such as a thumbprint.

KeyBank is a financial institution that has a generally applicable check-cashing policy for customers having no

account with it. For "identification purposes," such customer must produce his social security account number and thumbprint as conditions for KeyBank cashing his check. The stated reason for such policy is that of "lessen[ing] monies lost from the passing of fraudulent checks."

Yeager had no account with KeyBank. On 5/15/99, he attempted to cash a KeyBank accountholder's check drawn to his order. On the teller's request, Yeager produced his Ohio driver's license and employment photo-identification card to identify himself. Thereupon, in accord with bank policy, the teller silently penned Yeager's social security account number across, then demanded his inked thumbprint on the check before cashing it. When Yeager balked, citing his stated religious belief, the teller's supervisor turned him away without cashing the check.

Later that year, Yeager filed an R.C. Chapter 4112 affidavit with the OCRC, charging KeyBank with unlawful religious discrimination by a place of public accommodation. The charge was investigated and, in 3/00, a "No Probable Cause" recommendation was made to the OCRC. In pertinent part, it stated:

> "There is no evidence to show that Respondent's policy is intended to do anything other than to lessen monies lost from the passing of fraudulent checks. Evidence substantiates that several banking institutions have instituted similar identification policies and that the requirement of a thumbprint is endorsed by the Attorney General of the State of Ohio. (Reference omitted)

> Staff notes that there is little precedent regarding failing to accommodate based on religion in a place of public accommodation. Staff asserts that there are several Federal and Ohio cases indicating that a person is required to supply social security numbers, for purpose of identification, despite religious objections. The enclosed case law indicates that the interests of the government in obtaining a social security number or private entity [sic] outweigh the individual's religious convictions if the intent of such a request is based on legitimate record-keeping or business concerns."

OCRC adopted the recommendation and dismissed the charge, whereupon Yeager sought judicial review via statutory appeal to the Trumbull County, Ohio Court of Common Pleas. There, the Court upheld the OCRC disposition, finding the same to be neither unlawful, arbitrary nor capricious, commenting:

> "The bank has a procedure that it applies for an apparently valid reason. Plaintiff was treated no differently than any other non-member."

From that judgment, Yeager took an appeal to the Ohio Court of Appeals for the Eleventh Appellate District. That court affirmed, finding that the trial court had not abused its discretion in ruling in OCRC's favor below. In its Opinion, the Court of Appeals made two important observations:

"First, appellant contends that since the OCRC determination ignored the Free Exercise Clause, the trial court erred in finding its determination to be lawful. According to appellant, KeyBank's social security and thumbprint identification policy which applied only to non-customers who sought to have checks cashed, impermissibly forced him to choose between adhering to his religious beliefs and forfeiting the public accommodation of cashing his check, or abandoning his religious beliefs in order to have his check cashed. Appellant further believes that since KeyBank accountholders are exempt from its identification policy, the bank cannot, without compelling reasons, refuse to extend that exemption to cases of religious hardship.

Appellant, however, fails to recognize that the OCRC is <u>not</u> an administrative agency empowered to investigate alleged violations of the Free Exercise Clause. Rather, the OCRC is concerned with unlawful discriminatory practices as delineated in R.C. Chapter 4112. (Specific sections omitted) As such, appellant's arguments concerning the violation of the Free Exercise Clause are not applicable here."

And second:

"Undue hardship need only be a de minimus cost to the business. (State authorities omitted) To hold that individuals with certain religious beliefs should be exempt from the non-

> customer identification policy or provide other forms of identification that may be altered would place an undue hardship on KeyBank's security goal, which is to prevent fraud."

From that affirmance, Yeager sought further, discretionary review from the Supreme Court of Ohio; however, on 10/2/02, that Court declined jurisdiction to entertain his appeal.

On certiorari, Yeager now seeks this Court's plenary review.

ARGUMENT OF IMPORTANT QUESTION OF FEDERAL LAW

In Ohio, a prima-facie case of unlawful religious discrimination in a place of public accommodation contains three elements:

> (1) Complainant has a bona fide religious belief that conflicts with a rule or regulation of a place of public accommodation;
>
> (2) Complainant informed that place of such belief; and
>
> (3) Complainant was denied a benefit for refusing to comply with the conflicting rule or regulation.

In re Chiu, Unreported No. CRC 4386, 1986WL327228, at2 (10/14/86); and *Franks v. Nat'l Lime & Stone Co.,* 138 Ohio App.3d 124, 128 and 131 (Hancock 2000).

Once that case is made, the burden of proof shifts to the place of public accommodation to show that it could not accommodate Complainant's religious beliefs without an "undue hardship" in conducting its business. *Ibid.* Once that showing is made, the "religious beliefs" interest is subordinated to the competing business interest and the religious discrimination, although unfortunate, is not considered to be an "unlawful" discriminatory practice under Ohio law.

The federal rub in this analysis lies in the State's quantifying its "undue hardship" component as any "de minimus" business cost. Here, KeyBank was not put to task to show that other forms of identification, such as Yeager's driver's license and employment photo-identification, would be ineffective in preventing fraud. Rather, it needed only to articulate a "fraud prevention" bank policy to defeat Yeager's interest.

Such shabby treatment of the individual's "religious beliefs" interest runs counter to this Court's Free Exercise Clause jurisprudence derived from the Constitution's First and Fourteenth Amendments. See *Sherbert v. Verner,* 374 U.S. 398, 10 L.Ed.2d 965 (1963) and its progeny, *Bowen v. Roy,* 476 U.S. 693, 90 L.Ed.2d 735 (1986) and *Employment Division v. Smith,* 494 U.S. 872, 108 L.Ed.2d 876 (1990), especially *Sherbert* at 406:

> "It is basic that no showing merely of a rational relationship to some colorable state interest would suffice; in this highly sensitive [First Amendment] constitutional area, 'only the gravest abuses, endangering paramount interests, give occasion for permissible limitation.'" (Authority omitted)

Although laudable that the State of Ohio has created its own scheme for preventing unlawful discriminatory practices in places of public accommodation, its determinations of "unlawfulness" ought not be made without regard for the historical weight given to constitutionally-protected "religious" interests.

CONCLUSION

The Court should grant the Petition to address and remedy Ohio's anomalous treatment of the individual's Free Exercise interest in the enforcement of its anti-discrimination laws.

Respectfully Submitted,

MICHAEL D. ROSSI (#0005591)
Counsel of Record
GUARNIERI & SECREST, P.L.L.
151 E. Market Street
P.O. Box 4270
Warren, OH 44482 (330)393-1584
Counsel for Petitioner

APPENDIX A

THE SUPREME COURT OF OHIO

Case No. 02-1430

[Filed October 2, 2002]

Lee W. Yeager Appellant,	))
v.	)
Ohio Civil Rights Commission et al., Appellees.	)))

ENTRY

Upon consideration of the jurisdictional memoranda filed in this case, the Court declines jurisdiction to hear the case and dismisses the appeal as not involving any substantial constitutional question.

COSTS:

Docket Fee, $40.00, paid by Ohio State Bar Association.

(Trumbull County Court of Appeals; No. 2001T0076)

/s/ _____ _____
Thomas J. Moyer
Chief Justice

APPENDIX B

STATE OF OHIO
COUNTY OF TRUMBULL

THE COURT OF APPEALS
ELEVENTH DISTRICT

Case No. 2001-T-0076

[Filed August 6, 2002]

LEE W. YEAGER,	)
Plaintiff-Appellant,	)
	)
vs.	)
	)
OHIO CIVIL RIGHTS	)
COMMISSION, et al.,	)
Defendant-Appellee.	)
	)

JUDGMENT ENTRY

This matter comes before the court on a timely motion of appellant, Lee W. Yeager, for reconsideration of our decision in *Yeager v. Ohio Civil Rights Commission*, 11th Dist. No. 2001-T-0076, 2002-Ohio-3391. In *Yeager,* this court upheld the decision of the Trumbull County Court of Common Pleas, which determined that appellee, the Ohio Civil Rights Commission ("the OCRC"), did not act in an

unlawful, irrational, arbitrary and/or capricious manner by failing to issue a probable cause determination that Key Bank engaged in religious discrimination by utilizing its check cashing procedure.

This court has previously set forth the standard for ruling on a motion for reconsideration under App.R. 26:

> "The test generally applied upon the filing of a motion for reconsideration is whether the motion calls to the attention of the court an obvious error in its decision, or raises an issue for consideration that was either not considered at all or was not fully considered by the court when it should have been." *Woemer v. Mentor Exempted Village School Dist. Bd. of Edn.* (1993), 84 Ohio App.3d 844, 846.

An application for reconsideration is not designed to be used in situations where a party simply disagrees with the logic employed or the conclusions reached by an appellate court. *State v. Owens* (1996), 112 Ohio App.3d 334, 336. Instead, App.R. 26 is meant to provide "a mechanism by which a party may prevent a miscarriage of justice that could arise when an appellate court makes an obvious error" or renders a decision that is not supported by the law. *Owens* at 336.

In his application, appellant challenges this court's opinion on several grounds. First, appellant contends that there is no evidence in the record that his driver's license was

issued after the effective date of R.C. 4501.31, which was July 29, 1998. This, however, does not affect the disposition of this case.

The point of the opinion was that if appellant's religious beliefs were such that it prevented him from being identified by a number, then appellant had the option in late 1998, before the incident occurred with Key Bank, to renew his driver's license to have his social security number removed therefrom. Appellant did not do so, making his religious beliefs claim less credible.

Despite the fact that this court had concerns about the genuineness of appellant's religious beliefs, we *still* determined that "appellant's religious beliefs concerning his social security number and thumbprint *are sincerely held,* and that those beliefs conflicted with Key Bank's identification policy ***." (Emphasis added.) *Yeager* at ¶14. Thus, appellant's first argument is not well-taken.

Second, appellant takes issue with this court's statements that "[he] had other options available to him such as cashing the check with his own bank, or cashing the check at a check cashing service." *Yeager* at ¶26. Appellant asserts that there was no evidence in the record that he had his own bank account. Appellant also speculates and suggests that a check cashing service may have had the same identification policies as Key Bank.

The reasoning behind the above quoted statement was to illustrate that even if appellant was unable to cash the check at his own bank or at a check cashing service, there were

logical options available to an individual seeking to cash a check. Appellant second argument is, therefore, meritless.

Moreover, we note that appellant's focus on "evidence" is somewhat misplaced. The reliable, probative, and substantial *evidence* standard of review is not applicable to the review of the OCRC's findings of no probable cause to issue a complaint:

"Prior to the filing of a complaint, the procedure set out in the statute is informal and in the nature of an ex parte proceeding. Although the commission investigates the charge, it does not seek to receive formal evidence. Unlike the procedure set forth for a post-complaint formal hearing, R.C. 4112.05 does not provide for the swearing of witnesses, the taking of testimony, or the keeping of a record during the preliminary investigation. A determination of no probable cause is one which cannot, therefore, be reviewed on the basis of reliable, probative and substantial evidence. This standard can be applied by a reviewing court only to orders which come about subsequent to or as the result of an evidentiary hearing. In the absence of an evidentiary hearing, there is no evidence to review on appeal -- reliable, probative, substantial, or otherwise." *McCrea v. Ohio Civ. Rights Comm.* (1984), 20 Ohio App.3d 314, 316. *See, also, Salazar v. Ohio Civ. Rights Comm.* (1987), 39 Ohio App.3d 26, 27; *Ashiegbu v. Ohio Civ. Rights Comm.* (June 18, 1996), 10th Dist. No. 96APE01-4, 1996 WL 339958, 3.

Rather, a no probable cause determination is reviewed by the common pleas court to determine whether the OCRC's *decision* is unlawful, irrational and/or arbitrary and

capricious. *Coleman v. Warner* (1992), 82 Ohio App.3d 263, 265; *Salazar* at 27; *McCrea* at 317. Absent an abuse of discretion, an appellate court will not disturb the trial court's determination. *Ashiegbu* at 3-4.

Having clarified the appropriate standard of review, we return to appellant's application for reconsideration. Appellant suggests that this court applied the wrong definition of undue hardship. Appellant posits that according to *Ansonia Bd. of Ed. v. Philbrook* (1986), 479 U.S. 60, *Transworld Airlines, Inc. v. Hardison* (1977), 432 U.S. 63, and *Franks v. Natl. Lime & Stone Co.* (2000), 138 Ohio App.3d 124, an accommodation causes undue hardship when that accommodation results in more than a de minimus cost to the business.

Philbrook, Hardison, and *Franks* are distinguishable in that these cases do *not* hold that undue hardship always requires a showing of more than a de minimus cost to the business. Rather, these cases held that "[t]o require [the business] to bear more than a de minimis cost *** is an undue hardship." *TWA* at 84. See, also, *Philbrook* at 313-314; *Franks* at 132. In other words, these cases did not have an occasion to consider the bounds of undue hardship, that is, whether a de minimis cost to the business also constituted undue hardship.

In *Yeager,* this court held that "[u]ndue hardship need only be a de minimis cost to the business." Id at ¶26. This particular definition is consistent with that used by the Ninth Appellate District in a religious discrimination case, which stated that "[u]ndue hardship need only be a de minimis cost

to the employer." *Ward v. Hengle* (1997), 124 Ohio App.3d 396, 397, discretionary appeal not allowed, *Ward v. Hengle* (1998), 81 Ohio St.3d 1510, certiorari denied, *Hengle v. Ward* (1998), 525 U.S. 878. Accordingly, we find no error in our definition of undue hardship.

Even if we were to apply the more than de minimis standard in defining undue hardship, this would not affect the disposition of this case. Key Bank's identification policy was implemented to eliminate fraud. *Yeager* at ¶21. Bank personnel have no way to confirm appellant's or any person's claim of religious beliefs. *Id.* at fn. 2. Thus, to hold that individuals with certain religious beliefs should be exempt from an identification policy or provide other forms of identification that may be altered would defeat Key Bank's security goal, which is to prevent fraud. Accordingly, appellant's third argument for reconsideration is without merit.

Appellant also suggests that the use of a social security number by Key Bank for identification purposes is illegal. Appellant, however, never raised this specific issue on direct appeal. An application for reconsideration is not designed to provide a party with an opportunity to present *additional* arguments or legal theories that could have been raised on direct appeal.

For these reasons, the motion for reconsideration is denied.

/s/ _____
JUDGE DIANE V. GRENDELL

WILLIAM M. O'NEILL, P.J.,

JUDITH A. CHRISTLEY, J., concur.

APPENDIX C

IN THE COURT OF APPEALS
ELEVENTH APPELLATE DISTRICT
TRUMBULL COUNTY, OHIO

Case No. 2001-T-0076

[Decided July 1, 2002]

LEE W. YEAGER,
Plaintiff-Appellant,

vs.

OHIO CIVIL RIGHTS COMMISSION, et al.,
Defendant-Appellee.

Administrative Appeal from the Court of Common Pleas, Case No. 00 CV 1946.

Judgment: Affirmed.

Michael D. Rossi, Guarnieri & Secrest, 151 East Market Street, P.O. Box 4270, Warren, OH 44482 (For Plaintiff-Appellant).

Betty D. Montgomery, Attorney General, and Patrick M. Dull, Assistant Attorney General, State Office Tower, 15th Floor, 30 East Broad Street, Columbus, OH 43215-3428 (For Defendant-Appellee).

JUDGES:
DIANE V. GRENDELL, J. WILLIAM M. O'NEILL, P.J., JUDITH A. CHRISTLEY, J., concur.

OPINION

DIANE V. GRENDELL, J.

This is an administrative appeal taken from the decision of the Trumbull County Court of Common Pleas, which determined that appellee, the Ohio Civil Rights Commission ("the OCRC"), did not act in an unlawful, irrational, arbitrary and/or capricious manner by failing to issue a probable cause determination that Key Bank engaged in religious discrimination by utilizing its check cashing procedures.

The following facts are relevant to this appeal. On November 8, 1999, appellant filed a charge with the OCRC alleging religious discrimination against Key Bank. According to his affidavit, appellant was a Christian Fundamentalist, whose religious beliefs prevented him from being identified by either a number, such as a social security, or a mark, such as a finger/thumb print. Appellant believed that on May 15, 1999, he was unlawfully discriminated against by a place of public accommodation when Key Bank denied him the opportunity to complete a financial transaction and cash a check on the basis of his religion:

> "after correctly endorsing the back of the check and giving it to the [Key Bank] teller ***, she stated that I needed to provide her with a driver's license and a pictured worker I.D. I then provided her with my lawful Ohio Driver's License for identification, and a pictured employee card from my employer. She then, without my permission and knowledge, made unlawful use, as a form of identification, my Social Security Number by disclosing it in writing across the face of this check. ***
>
> "*** This teller then requested me to take my right hand and saturate my thumb with ink and make my thumbprint on the check. I refused. She stated it was 'bank policy' that all non-Key Bank customers be required to provide a fingerprint. I told her that I am exercising a sincerely held religious belief that prevents me from doing this."

On April 27, 2000, the OCRC determined that there was no probable cause for appellant's charge. As such, appellant requested reconsideration of the OCRC determination. Apparently, a hearing was held on June 8, 2000. Then, on September 25, 2000, the OCRC adopted the original recommendation of no probable cause.

In accordance with R.C. 4112.06, on October 24, 2000, appellant filed a petition with the trial court seeking judicial review of the OCRC's determination that it was not

probable that Key Bank had engaged in unlawful discriminatory practices under R.C. Chapter 4112.

The record of the proceedings before the OCRC was filed with the trial court, and the matter was fully briefed. On July 27, 2001, the trial court determined that the OCRC did not act in an unlawful, irrational, arbitrary and/or capricious manner by failing to issue a probable cause determination. It is from this judgment appellant appeals, submitting a single assignment of error for our review:

"The trial court erred in finding Appellee's 'not probable' determination and consequent refusal to issue an R.C. Chapter 4112 complaint to be 'lawful, rational and not arbitrary or capricious."

In his lone assignment of error, appellant submits two separate issues for review. First, appellant contends that since the OCRC determination ignored the Free Exercise Clause, the trial court erred in finding its determination to be lawful. According to appellant, Key Bank's social security and thumbprint identification policy, which applied only to non-customers who sought to have checks cashed, impermissibly forces him to choose between adhering to his religious beliefs and forfeiting the public accommodation of cashing his check, or abandoning his religious beliefs in order to have his check cashed. Appellant further believes that since Key Bank account holders are exempt from its identification policy, the bank cannot, without compelling reasons, refuse to extend that exemption to cases of religious hardship.

Appellant, however, fails to recognize that the OCRC is *not* an administrative agency empowered to investigate

alleged violations of the Free Exercise Clause. Rather, the OCRC is concerned with unlawful discriminatory practices as delineated in R.C. Chapter 4112. *See* R.C. 4112.04(A)(6); R.C. 4112.05. As such, appellant's arguments concerning the violation of the Free Exercise Clause are not applicable here.

Second, appellant maintains that the OCRC never shifted the burden to Key Bank to show that it could not have reasonably accommodated him without undue hardship in conducting its business. From this, appellant concludes that the OCRC's determination was incomplete and irrational.

Before we address appellant's arguments, it is necessary to set forth the appropriate standard of review in this matter. "Upon review of a determination that no probable cause exists [to issue a complaint], the common pleas court must determine whether [the] OCRC's decision is unlawful, irrational, and/or arbitrary and capricious." *Coleman v. Warner* (1992), 82 Ohio App.3d 263, 265, 611 N.E.2d 878. *See, also, Salazar v. Ohio Civ. Rights Comm.* (1987), 39 Ohio App.3d 26, 27, 528 N.E.2d 1303; *McCrea v. Ohio Civ. Rights Comm.* (1984), 20 Ohio App. 3d 314, 317, 20 Ohio B. 416, 486 N.E.2d 143. Absent an abuse of discretion, an appellate court will not disturb the trial court's determination. *Ashiegbu v. Ohio Civ. Rights Comm.* (June 18, 1996), 1996 Ohio App. LEXIS 2559, 10th Dist. No. 96 APE01-4, 1996 WL 339958, at 3-4; *Kutz v. Ohio Edn. Assn.* (Mar. 16, 1995), 1995 Ohio App. LEXIS 1015, 10th Dist. No. 94 APE06-781, 1995 WL 115428, at 3-4. An abuse of discretion connotes more that an error of law or judgment; rather, it implies the trial court's attitude is unreasonable, arbitrary, or unconscionable. *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 219, 5 Ohio B. 481, 450 N.E.2d 1140.

At the outset, we note that there is little precedent in Ohio regarding the failure to accommodate an individual based on religious discrimination by a place of public accommodation. In order to establish a prima facie case of religious discrimination in a public accommodation case, appellant has to establish the following: "(a) Complainant has a bona fide religious belief that conflicts with a rule or regulation of a place of public accommodation; (b) Complainant informed the representative of the place of public accommodation of this belief; (c) Complainant was deprived of a benefit for failure to comply with the conflicting rule or regulation." *In re Chui* (Oct. 14, 1986), CRC 4386, 1986 WL 327228, at 2. *See, also, Franks v. Natl. Lime & Stone Co.*, 138 Ohio App.3d 124, 2000 Ohio 1880, 740 N.E.2d 694. (employment discrimination case).

With the foregoing in mind, we consider the case at bar. We will assume, arguendo, as did the OCRC, that appellant's religious beliefs concerning his social security number and thumbprint are sincerely held, and that those beliefs conflicted with Key Bank's identification policy with the following caveat.

We note that appellant voluntarily provided Key Bank with his driver's license which contained his social security number. Apparently, appellant's religious beliefs did not extend to the use of his social security number on his driver's license. In fact, the OCRC recognized this in its April 27, 2000 decision:

> "Evidence substantiates that the [appellant] did not refuse to use his social security number when it was requested

> initially. Evidence substantiates that [appellant] was upset after [Key Bank's] teller wrote [appellant'] social security number on the face of the check. Therefore, [appellant's] convictions regarding the use of his social security number are suspect."

Contrary to appellant's contention, R.C. 4501.31 was in effect at the time he provided Key Bank with his driver's license containing his social security number. Pursuant to R.C. 4501.31(A), appellant could have declined to have his social security number placed on his driver's license.[1]

Nevertheless, a review of the record shows that appellant complained to several Key Bank employees about the conflict between their identification policy and his

---

[1] The following version of R.C. 4501.31(A) was in effect in May 1999 at the time appellant provided Key Bank with his driver's license containing his social security number:

"Every driver's license, commercial driver's license, temporary instruction permit, and identification card issued by the registrar of motor vehicles or a deputy registrar on or after the effective date of this amendment shall display the social security number of the person to whom the license, permit, or card is issued *unless the person to whom the license, permit, or card is to be issued specifically requests that the person's social security number not be displayed on the license, permit, or card.* If federal law requires the person's social security number to be displayed on the license, permit, or card, the social security number shall be displayed on the license, permit, or card notwithstanding this division."

religious beliefs.[2] Furthermore, in their position statement, Key Bank conceded to the fact that appellant was denied the ability to cash a check at their financial institution. Accordingly, appellant has established a prima facie case of religious discrimination.[3]

Once a prima facie case of religious discrimination is established, the burden then shifts to the business "to show that it could not accommodate Complainant's religious belief without an undue hardship on the conduct of its business." *Chui* at 3. *See, also, Franks*, 138 Ohio App. 3d at 131.

Contrary to appellant's assertion, the OCRC did shift the burden to Key Bank to demonstrate undue hardship in accommodating him. In fact, in the September 25, 2000 determination, the OCRC stated the following:

---

[2] As an aside, we note that the bank personnel had no way to confirm appellant's claim of valid religious beliefs at the time of the incident.

[3] This is confirmed by the OCRC's April 27, 2000 determination, which stated in relevant part:

"Staff notes that the religious beliefs, convictions and tenets of Charging Party's [appellant] faith have not been questioned. Therefore, it is assumed that Charging Party has standing to file this matter. ***"

"Furthermore, Staff notes that the accounts of Charging Party and Respondent [Key Bank] are not in question. Both parties agree that Charging Party was denied the opportunity to cash the check, and that Charging Party complained to several members of Respondent's Staff regarding their policies. ***"

"Moreover, the Respondent's [Key Bank] procedure is part of the normal business practice in the banking industry and is designed to eliminate check fraud and counterfeiting. The thumbprinting signature program was implemented through the Ohio Attorney General's Office in an effort to reduce the loss of nearly ten billion dollars suffered annually by banks due to check fraud.[4] *In the instant case it is simply not reasonable for a banking institution to waive its established security provision, to accommodate the alleged religious beliefs of an individual.*

"The evidence substantiates that Charging Party [appellant] had other alternatives available to him for cashing checks without providing his social security number or thumbprint, including the opening of an account with Respondent. *As the obligation to accommodate a religious belief is de minimus, the hardship placed on the Respondent exceeds its obligation to make the accommodation requested by Charging Party.*" (Emphasis added.)

---

[4] The Ohio Attorney General's Office also indicated that other states such as Arizona, Utah, Colorado, Nevada and Texas have experienced a significant decline in fraud loss as a result of participating in the thumbprint signature program.

"The reasonableness of an accommodation is determined on a case-by-case basis." *Franks*, 138 Ohio App. 3d at 131. In the instant matter, the most obvious accommodation would have been to exempt appellant from both providing a thumbprint and his social security number to identify him, and instead, have him provide other forms of identification.

As to this point, Key Bank did not specifically provide evidence that using other forms of identification would be ineffective in preventing fraud. However, in its position statement, Key Bank explained the importance of its non-customer identification policy and emphasized that the policy was implemented for security reasons to combat against check fraud and counterfeiting:

> "While a driver's license or social security card can be altered, the likelihood of a thumbprint alteration is rare because a thumbprint is unique to each person."

Undue hardship need only be a de minimis cost to the business. *Franks*, 138 Ohio App. 3d at 132; *Ward v. Hengle* (1997), 124 Ohio App.3d 396, 404, 706 N.E.2d 392 (employment discrimination cases). To hold that individuals with certain religious beliefs should be exempt from the non-customer identification policy or provide other forms of identification that may be altered would place an undue hardship on Key Bank's security goal, which is to prevent fraud. Furthermore, appellant had other options available to him such as cashing the check with his own bank, or cashing the check at a check cashing service.

In summation, we hold that the trial court did not abuse its discretion in finding that the OCRC's determination of no probable cause was not unlawful, irrational and arbitrary and/or capricious. We would note, however, that we feel the issue raised in this case is of great importance. As such, this court is well aware of the competing concepts between businesses requiring its customers to provide certain forms of identification in an effort to prevent fraud and determining what constitutes reasonable identification. In each instance, the goal appears to be the same, that is, to protect Ohio consumers.

Based on the foregoing analysis, appellant's single assignment of error is without merit, and the judgment of the trial court is affirmed.

WILLIAM M. O'NEILL, P.J.,

JUDITH A. CHRISTLEY, J., concur.

APPENDIX D

IN THE COURT OF COMMON PLEAS
TRUMBULL COUNTY, OHIO

Case No. 00-CV-1946

[Filed July 27, 2001]

LEE W. YEAGER,	)
Plaintiff(s)	)
	)
vs.	)
	)
OHIO CIVIL RIGHTS	)
COMMISSION,	)
Defendant(s)	)
	)

JUDGMENT ENTRY

This Court after review finds no reason to find the decision of the Commission to be unlawful, irrational and/or arbitrary and capricious.

The bank has a policy requiring a non-member to identify him or herself by social security number and fingerprint. Plaintiff objects to the use of either as a means of identification based on religious beliefs. Assuming a non-member in a similar situation doesn't want his or her fingerprint taken because that person doesn't trust government

to have possible access or just because they do not wish to have ink on their finger, would it be valid to object and claim discriminatory practice. The bank has a procedure that it applies for an apparently valid reason. Plaintiff was treated no differently than any other non-member. The religious beliefs of Plaintiff had nothing to do with the failure to cash his check. The check would not have been cashed if there was an objection for any reason other than religious reasons.

For the above reason, this Court finds the decision of the Commission to be lawful, rational and not arbitrary or capricious.

Plaintiff's appeal is denied. Plaintiff to pay costs.

There is no just cause for delay of appeal of this matter.

7/25/2001 /s/ _____
DATE Judge John M. Stuard

APPENDIX E

OHIO CIVIL RIGHTS COMMISSION
"Many Faces...One Cause"

Lee Yeager
26 Lexington Pl.
Austintown, OH 44515

Delores Solema
Quality Service Manager
KeyBank National
Association
1737 S. Raccoon Rd.
Austintown, OH 44515

G3051599 (24242) 110899

The Charging Party, **Lee Yeager**, has filed an affidavit with the Ohio Civil Rights Commission alleging that he was denied service in a place of public accommodation, by the Respondent, **KeyBank National Association**, because of his religion.

All jurisdictional requirements for filing a charge have been met.

Evidence does not substantiate that Charging Party was denied service based on his religion. Evidence substantiates that Charging Party was denied the opportunity to cash a check because he refused to provide his thumbprint for identification

purposes. There is no evidence to show that Respondent intended to do anything but lessen monies lost from the passing of fraudulent checks.

Upon investigation, the Ohio Civil Rights Commission has determined that it is **NOT PROBABLE** that Respondent has engaged in practices unlawful under Section 4112, Ohio Revised Code, and hereby orders the case dismissed.

NOTICE OF RIGHT TO JUDICIAL REVIEW:

This determination of the Ohio Civil Rights Commission constitutes a final order of the Commission and is subject to judicial review. Revised Code 4112.06 sets forth the right to obtain judicial review of this order and the mode and procedure thereof. A petition for judicial review of a Commission order must be filed within **THIRTY (30)** days of mailing of the order. For further information on the process of obtaining judicial review of this order, you are advised to consult an attorney.

NOTICE OF RIGHT TO REQUEST RECONSIDERATION:

You have the right to request reconsideration of this determination of the Commission. Such application must be in writing and state specifically the grounds upon which it is based.

This request must be sent to the Compliance Department, Ohio Civil Rights Commission, 1111 E. Broad Street, Suite 301, Columbus, Ohio 43205-1379.

You must make this request for reconsideration within **TEN (10)** days of the date of mailing of this notice. Any application for reconsideration received by the Compliance Department in the Commission's Columbus Central Office after the ten-day period has expired, will be deemed untimely filed.

The Commission's Rules do not permit any employee of the Commission to grant any extension to this ten-day filing period.

FOR DUAL FILED CHARGES ONLY:

If your charge also carries a Federal charge number (a 9-digit number beginning with 220, 221 or 22A), it was filed with both OCRC and the U.S. Equal Employment Opportunity Commission (EEOC) .

If the charge alleged discrimination on the basis of your disability, or alleged that you were retaliated against for opposing disability discrimination, OCRC's final finding will automatically be reviewed by EEOC.

If it was filed on some basis other than disability discrimination, you have the right to request that EEOC review this determination. To secure such a review, you must request it in writing within **FIFTEEN (15)** days of this determination, unless you request reconsideration by OCRC. In that event, our final finding, and the time for you to request review by EEOC, will be determined by OCRC's action on your reconsideration request.

FOR THE COMMISSION,

/s/ _____
Keith P. McNeil,
AKRON REGIONAL DIRECTOR

KPM/wma

ANALYSIS OF EVIDENCE

The following is an analysis of the facts gathered during the investigation process:

All jurisdictional elements have been met. (Attachments A, B) A fact-finding conference was not held. An on-site investigation of Respondent's premises was not conducted. Respondent provided a position statement on February 29, 2000. (Attachment C) Charging Party provided no witnesses. Respondent provided four witnesses who provided affidavits. (Attachments D, E, F, G) Respondent did not provide their Application for Employment due of its lack of relevance in a public accommodation case. A corporation check reveals that Respondent is registered with the Secretary of State. (Attachment H) Respondent has revealed their legal name to be KeyBank National Association. (Attachment C)

The Failure to Accommodate Issue:

On November 5, 1999 the Charging Party filed an affidavit with the Commission alleging that he was denied equal service in a place of public accommodation based on his religion. Charging Party asserts that on May 15, 1999 he was

refused the opportunity to cash a check when he refused to supply a thumbprint for identification. Charging Party asserts that the use of his social security number and Respondent's request for a thumbprint violates a firmly held belief, related to his religion, Christian Fundamentalist. (Attachment A)

The Respondent supplied a position statement in response to the Charging Party's allegations of February 20, 2000. Respondent agrees that the Charging Party was denied the ability to cash a check at their financial institution. Respondent asserts that the Charging Party, who does not have an account with their financial institution, attempted to cash a check written by a customer of Respondent. Respondent states that they have a policy that requires a social security number and thumbprint for persons attempting to cash a check that do not have an account at their institution. Respondent asserts that their policy is neutral and was not instituted with the intent to discriminate against persons of a particular religion. Respondent asserts that the policies at hand in this matter were implemented based on legitimate business concerns, in an attempt to reduce fraudulent check cashing, reducing the amount of lost revenue. (Attachment C)

Staff notes that the religious beliefs, convictions, and tenets of Charging Party's faith have not been questioned Therefore, it is assumed that Charging Party has standing to file this matter. (Attachment A, B, C)

Furthermore, Staff notes that the accounts of Charging Party and Respondent regarding Charging Party's attempt to cash a check are not in question. Both parties agree that Charging Party was denied the opportunity to cash the check, and that

Charging Party complained to several members of Respondent's Staff regarding their policies. (Attachments A, B, C, D, E, F, G)

Evidence substantiates that the Charging Party did not refuse the use of his social security number when it was requested initially. Evidence substantiates that Charging Party was upset after Respondent's teller wrote Charging Party's social security number on the face of the check. Therefore, Charging Party's convictions regarding the use of his social security number are suspect. (Attachment A, B, C, D, E, F, G)

Evidence substantiates that Respondent has a policy requiring that persons who do not have an account at their institution that are attempting to cash a check are required to provide their social security number and thumbprint for identification purposes. The evidence fails to substantiate that Respondent's policy is intended to discriminate against persons in a particular protected class. There is no evidence to show that Respondent's policy is intended to do anything other than to lessen monies lost from the passing of fraudulent checks. Evidence substantiates that several banking institutions have instituted similar identification policies and that the requirement of a thumbprint is endorsed by the Attorney General of the State of Ohio. (Attachments C, I, J)

Staff notes that there is little precedent regarding failing to accommodate based on religion in a place of public accommodation. Staff asserts that there are several Federal and Ohio cases indicating that a person is required to supply social security numbers, for purpose of identification, despite

religious objections. The enclosed case law indicates that the interests of the government in obtaining a social security number or private entity outweigh the individual's religious convictions if the intent of such a request is based on legitimate record-keeping or business concerns. Staff asserts that a similar rationale should be applied to the Respondent's thumb printing policy. (Attachments C, J, K, L)

Also, Staff concurs with Respondent's assertion that Charging Party has several options available to cash the check that would not violate any of his alleged religious convictions. Evidence substantiates that Charging Party did not exercise any of said options. (Attachment A, B, C)

In summary, the evidence fails to substantiate that the Charging Party was discriminated against in a place of public accommodation based on his religion. Based on the foregoing, Staff recommends that a NO PROBABLE CAUSE finding be assigned to this matter.

Notes and Observations

Staff notes that several of the issued raised by the Charging Party in his affidavit were not addressed in this report. These issues were not addressed because they are questions of law not enforced by the Commission. (Attachment A)

Charging Party and Respondent were notified of Staff's recommendation by mail. (Attachment N)

CERTIFICATIONS:

/s/	3/9/00	DAYS	
William M. Alford, Investigator	Date	TPT	
/s/	3/27/00		
Margaret Lawson, Supervisor	Date	TPT	
/s/	3/28/00	141	DAYS
Diana J. Peske	Date	TPT	
Akron Chief Supervisor			

I certify that this case report, attachments, and processing time are complete, accurate, and in compliance with the standards of the Commission. I certify that I have prepared a **Notice of Disposition** that is an accurate summary of my recommended findings and submitted it for Central Office Review.

Comments:

/s/	3/28/00	141	DAYS
Keith P. McNeil	Date	TPT	
Akron Regional Director			

APPENDIX F

OHIO REVISED CODE
§ 4112.02(G)

It shall be an unlawful discriminatory practice for any proprietor or any employee, keeper, or manager of a place of public accommodation to deny any person, except for reasons applicable alike to all persons regardless of race, color, religion, sex, national origin, handicap, age or ancestry, the full enjoyment of the accommodations, advantages, facilities, or privileges of the place of public accommodation.